

(Published in the Topeka Metro News December 12, 2016)

ORDINANCE NO. 20039

AN ORDINANCE introduced by Interim City Manager Doug Gerber, revising Chapter 5.115 of the Topeka Municipal Code concerning peddlers, solicitors, and itinerant merchants, amending City of Topeka Code § 5.115.010 through § 5.115.160 and repealing original sections and creating new § 5.115.170 through § 5.115.220.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS:

Section 1. That section 5.115.010, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Definitions.

~~For the purpose of this title, t~~The following words as used hereinused in this chapter shall be considered to have the meanings herein ascribed theretomean:

~~“Canvasser” or “solicitor” means any individual, whether resident of the city or not, traveling either by foot, wagon, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries, or exposes for sale a sample of the subject of such sale or whether he or she is collecting advance payments on such sales or not.~~

~~“Peddler” means any person, whether a resident of the city or not, traveling either by foot, wagon, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products~~

~~or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, or conveyance; and further provided, that one who solicits orders and as a separate transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this chapter shall be deemed a peddler.~~

~~“Residence” means and includes every separate living unit occupied for residential purpose by one or more persons contained within any type of building or structure.~~

~~“Soliciting” means and includes any one or more of the following activities:~~

~~(1) Seeking to obtain order for the purpose of selling goods, wares, merchandise, foodstuffs, services, of any kind, character or description whatsoever, for any kind of consideration whatsoever; or~~

~~(2) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication.~~

~~“Street salesman” means any person engaged in any manner in selling merchandise of any kind from a wagon or stand temporarily located on the public streets or sidewalks of this city as authorized by the governing body.~~

~~“Transient merchant or vendor,” “itinerant merchant” or “itinerant vender” means any person, whether as an owner, agent, consignee or employee, whether a resident of the city or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within such city, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, or public room in hotels, lodging houses, apartments, shops or any street, alley or other place within the city, for~~

~~the exhibition and sale of such goods, wares and merchandise, either privately or at public auction. Such definition shall not be construed to include any person who, while occupying such temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery only. The person so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant or auctioneer.~~

“Day” means a 24 hour period that commences at 12:00 a.m. and ends at 11:59 p.m.

“Farmers’ market” means a common facility or area where producers or growers gather on a regular, recurring basis to sell fresh fruits, vegetables, meats and other farm products directly to consumers. “Farmers’ market” includes, but is not limited to, short-term festivals, roadside stands or other agricultural product sales or other locations or any market, sales event or other related event, series of events or venue that advertises, promotes or uses the term “farmers’ market” or any derivative thereof, as a part of the name of such market, sales event, or other related event or venue.

“Flea market” means a market, indoors or outdoors, where new or used items are sold from individual sellers and where each seller operates independently from other sellers. Items sold include, but are not limited to, household items, antiques, decorations, and crafts.

“Flea market promoter” means a person who solicits, invites or permits another person to come upon property under the promoter’s control for the purpose of

75 occupying individual stands from which personal property is bought, sold, traded, or
76 exchanged.

77 “Flea market seller” means a person selling items or offering items for sale at a
78 flea market.

79 “Merchandise” means any goods, food, food products, or a product of any kind
80 that can be bought or sold.

81 “Mobile food vendor” means any person, other than a transient vendor or
82 sidewalk vendor, that offers food and/or beverage for sale from a mobile food unit.

83 “Mobile food unit” means a self-contained vehicle, trailer, cart or other
84 conveyance from which food and/or beverage is offered for sale.

85 “Peddler” means any person who goes upon the premises of a private
86 residence, not having been invited by the occupant, carrying merchandise and offering
87 the same for sale.

88 “Person” means any individual, association, corporation partnership, limited
89 liability company or other legal entity.

90 “Sidewalk vendor” means any person, other than a mobile food vendor, who
91 engages in the business of selling merchandise on a public sidewalk.

92 “Solicitor” means any person who goes upon the premises of a private residence,
93 not having been invited by the occupant, for the purpose of taking or attempting to take
94 orders for the sale of merchandise for future delivery or for services to be performed in
95 the future.

96 “Transient vendor” means any person, other than a mobile food vendor, flea
97 market promoter or flea market seller, who engages in a temporary business of selling
98 merchandise and operates on private property.

99 Section 2. That section 5.115.020, Street sales, of The Code of the City of
100 Topeka, Kansas, is hereby amended to read as follows:

101 ~~Street sales~~Transient vendor, peddler, solicitor—License required;
102 Exceptions.

103 ~~No person shall locate any stand for the sale of any candies, confectionery, fruits,~~
104 ~~popcorn, peanuts or other foods on any street, sidewalk, park, parkway or in any other~~
105 ~~public place unless such person shall first obtain a license permitting him to do so. No~~
106 ~~person so licensed shall block or obstruct in any manner any street, sidewalk, park,~~
107 ~~parkway or other public place. Provided, however, notwithstanding the requirement for a~~
108 ~~license, the city engineer may issue temporary permits from time to time upon~~
109 ~~application of any merchant to place stands, tables, racks or other devices for the sale~~
110 ~~and display of merchandise upon public sidewalks, for a period not exceeding 12 hours~~
111 ~~a day. Upon application for any such temporary permit, the city engineer may require~~
112 ~~the merchant to furnish insurance or a hold-harmless agreement as a condition of such~~
113 ~~permit.~~

114 (a) It shall be unlawful for any person to conduct business as a transient
115 vendor without a license having been issued pursuant to this chapter unless one of the
116 following exceptions applies:

117 (1) Sales by a vendor approved by the sponsor of a special event for
118 which the sponsor has secured a special event permit in accordance with
119 Chapter 12.70 of the Code.

120 (2) Sales at wholesale to retail merchants in the usual course of their
121 business.

122 (3) Sales conducted inside the following structures: trade centers,
123 convention centers, shopping centers, and trade, exhibition or convention centers
124 located in hotels and motels.

125 (4) Garage sales held on premises devoted to residential use.

126 (5) Auctions.

127 (6) Promotional trade or hobby shows conducted within districts zoned
128 for commercial use.

129 (7) Sales or displays at fairs, expositions or promotional events where
130 the activity is sponsored by the city or another governmental entity.

131 (8) Sales by a vendor approved by an educational institution, religious
132 organization, civic organization, or not-for-profit organization at athletic events or
133 concessions sponsored by the organization.

134 (9) Sales at a farmer's market that is registered with the Kansas
135 Department of Agriculture.

136 (10) Sales of an individual's personal property by an executor or
137 administrator of the estate.

138 (b) It shall be unlawful for any person to conduct business as a peddler or
139 solicitor without a license issued pursuant to this chapter unless the activity is

sponsored by an educational institution, religious organization, civic organization or not-for-profit organization.

Section 3. That section 5.115.030, Prohibited acts, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Prohibited acts**Transient vendor, peddler, solicitor—License application; Fee; Duration.**

It shall be unlawful for any transient merchant to:

(a) ~~Sell, offer or expose for sale any goods, wares or merchandise within 500 feet from any property on which any public or private school building is located.~~

(b) ~~Conduct business or carry on activities in violation of any zoning requirements of the city, including setback requirements.~~

(c) ~~Conduct business or carry on activities except in areas zoned C-2 commercial, C-4 commercial, C-5 commercial, I-1 light industrial, I-2 heavy industrial, PUD planned unit development or planned business centers.~~

(d) ~~Conduct business or carry on activities until one-half hour before sunrise or after one-half hour past sunset or at any time that would cause the need for the use of artificial lighting other than existing lighting.~~

(e) ~~Fail to provide adequate parking for customers or other such persons going to and from the activity conducted by the transient merchant, or to allow or encourage any traffic or parking congestion which interferes with traffic flow or the use of such parking facilities by permanent businesses entitled to use such parking areas. In no event shall the total floor area used by the transient merchant cause a reduction in the number of parking spaces to a number less than the number required by the zoning laws for~~

~~adjacent buildings or other zoned land uses. Additionally, in calculating the number of parking spaces needed, the total floor area used outside existing structures by the transient merchant shall be added to the floor area of those existing structures. For purposes of calculating total floor area, the areas where any part of the activity is physically located, including merchants' vehicles, mechanical devices, and open spaces used as accessways, aisles, or for purposes of promoting the activity or sales, shall be included.~~

~~(f) Use any electronic device for amplification in an outdoor area or to otherwise create, or gather people who create, noise sufficient so as to disturb the peace, quiet or repose of surrounding residential or commercial areas.~~

~~(g) Provide any false or misleading information in completing the license application or to fail to obtain permission of the property owner where such activity is being conducted.~~

~~(h) Fail to provide, at the request of the purchaser or customer, a written receipt for purchases exceeding \$5.00.~~

~~(i) Fail to provide any customer, or other such person, with his name, the name of the company or organization represented, the name of the product, or to make any representation as to identity which is false or misleading.~~

~~(j) Fail to allow authorized law enforcement officers or city employees to enter into or upon the premises or to otherwise interfere with any inspection of the premises or business.~~

~~(k) Fail to remove any structure, device, trash or debris caused, created or associated with the transient merchant's activities in an outdoor area.~~

~~(l) Erect or display more than one sign or any sign greater than 16 square feet in total area. A separate sign permit shall not be required.~~

~~(m) Erect or construct any structure, tent or building greater than 120 square feet.~~

~~(n) Conduct business or carry on activities within 50 feet of any driveway entrance or access lane from a public street to an existing business.~~

~~(o) Conduct or carry on more than one transient merchant business or activity on the same property at any one time.~~

~~(p) Conduct business or carry on activities within the city right-of-way or other publicly owned property.~~

(a) Application shall be made to the city clerk on a form provided by the city clerk. In addition to paying the license fee, the applicant shall attest to the truthfulness of the application and shall complete the application in full, providing the following information:

(1) Name and permanent address of the applicant and the business. If the applicant is not an individual, the names and permanent addresses of the officers of the corporation or the members of the partnership, firm, limited liability company, or other business entity.

(2) The applicant's Kansas sales tax certificate number, if applicable.

(3) A brief description of the licensed activity, including the nature of the applicant's business and the merchandise or services being offered.

(4) The location of any structure, building or conveyance to be used in the course of the licensed activity, including a site plan.

(5) A statement indicating whether or not the applicant has had a transient vending license or a peddler's or solicitor's license revoked by the City or another municipality within the two preceding years prior to the date of application.

(6) For peddlers and solicitors, a statement whether or not within 10 years immediately preceding the date of making application the applicant has been convicted of any felony or misdemeanor involving crimes against persons as those crimes are defined in Chapter 21, Article 54, Kansas Statutes Annotated, and theft, burglary, and criminal use of a financial card as those crimes are defined in Chapter 21, Article 58, Kansas Statutes Annotated. Criminal background reviews will be conducted by the police chief or designee.

(7) For transient vendors, written authorization from the owner or lessee of private property that the applicant may conduct activities at the identified site.

(b) License Fees; Duration. The following license fees shall not be pro-rated or refundable for any reason, including denial of an application or license revocation:

(1) Transient Vendor: \$10 per day. A transient vendor license shall be valid only for the day(s) set out in the license; except that the license is not valid on days during which special events permitted pursuant to TMC Chapter 12.70 occur unless the participation of the licensee has been approved by the special event sponsor.

229 (2) Peddler or Solicitor: \$250, plus the cost of the criminal background
230 review. A peddler or solicitor license shall expire on December 31 of the year in
231 which it is issued.

232 Section 4. That section 5.115.040, Protection of lawns, yards, of The Code of
233 the City of Topeka, Kansas, is hereby amended to read as follows:

234 ~~Protection of lawns, yards~~Transient vendor, peddler, solicitor—License
235 issuance; Denial; Right to appeal.

236 ~~It shall be unlawful for any person engaging in peddling or soliciting to cut across~~
237 ~~or walk upon any lawn, front yard or courtyard, except upon sidewalks or walkways if~~
238 ~~such walkways are provided or upon a regularly established path where no sidewalk or~~
239 ~~walkway has been provided to the house or other building.~~

240 (a) The city clerk shall review each license application and shall consult with
241 other city departments, as applicable. The city clerk, after consultation with the legal
242 department, may deny the license application for any of the following:

243 (1) Fraud, misrepresentation or any false statement contained in the
244 license application.

245 (2) Failure to pay the license fee and/or provide all of the information
246 requested in the license application.

247 (3) For peddlers and solicitors, conviction of the applicant or, if the
248 applicant is a business entity, any of the entity's employees who are performing
249 the activities of a peddler or solicitor, of the crimes identified in TMC 5.115.030.

(4) Revocation of a license for transient vending, including a peddler or solicitor license, by the city or another municipality within the two preceding years prior to the date of application.

(b) Except for a denial based upon subsection (a)(2), an applicant may appeal the decision to the council in accordance with TMC 5.05.120.

Section 5. That section 5.115.050, Fraud, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Fraud~~Transient vendor, peddler, solicitor~~—Prohibited acts.

~~All persons licensed under the provisions of this chapter shall certify that while doing business in the city they will strictly comply with all the ordinances of the city. Any licensee who shall be guilty of any fraud, cheating or misrepresentation, whether through themselves or through an employee, while doing business in the city shall be deemed guilty of a violation of this chapter.~~

(a) Transient vendors. It shall be unlawful for any transient vendor to do any of the following:

(1) Conduct business or carry on activities in violation of any zoning ordinances or requirements, including setback requirements.

(2) Conduct business between the hours of midnight and 8 a.m.

(3) Conduct business in such a way as would restrict or interfere with the ingress or egress of abutting property owners or tenants, increase traffic congestion or obstruct adequate access to fire, police or utility employees.

(4) Use any electronic device for amplification in an outdoor area or to otherwise create, or gather people who create, noise sufficient so as to disturb the peace, quiet or repose of surrounding residential or commercial areas.

(5) Fail to allow law enforcement officers or city employees to enter into or upon the premises or to otherwise interfere with any inspection of the premises or business.

(6) Fail to have a trash receptacle at the location. Immediately upon cessation of vending, the vendor shall remove and properly dispose of all trash and litter associated with the vendor's activities.

(7) Erect or construct any structure, tent or building greater than 120 square feet.

(8) Conduct business or carry on activities within 50 feet of any driveway entrance or access lane from a public street to an existing business.

(9) Conduct or carry on more than one transient vendor business or activity on the same property at any one time.

(b) Peddlers; solicitors. It shall be unlawful for a peddler or solicitor to operate between the hours of 6:00 p.m. and 9:00 a.m.

Section 6. That section 5.115.060, Vehicles, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

~~Vehicles~~Transient vendor, peddler, solicitor—Display of license.

~~No transient merchants shall sell products or services directly from any vehicle exceeding three-quarter ton in rated load capacity.~~

Each transient vendor licensee shall display the license in a prominent place so that it is clearly visible to the public. Peddlers and solicitors shall display the license, upon request.

Section 7. That section 5.115.070, Use of street, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Use of streetSidewalk vendor—License required; Exceptions.

~~No peddler shall have any exclusive right to any location in the public streets, nor be permitted a stationary location except as provided in this chapter. No peddler shall be permitted to operate in any congested area where his or her operations might impede or inconvenience the public. For the purpose of this chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.~~

It shall be unlawful for any person to conduct business as a sidewalk vendor without a license having been issued pursuant to this chapter unless either of the following applies:

(a) The vendor is approved by the sponsor of a special event for which the sponsor has secured a special event permit in accordance with Chapter 12.70 of the Code; or

(b) The vendor is conducting business at a farmer's market registered with the Kansas Department of Agriculture.

Section 8. That section 5.115.080, Enforcement, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

EnforcementSidewalk vendor—License application; Fee; Duration.

316 ~~It shall be the duty of any police officer to require any person engaged in the~~
317 ~~activities as defined in this chapter, who is not known by such officer to be duly~~
318 ~~licensed, to produce his or her license and to enforce the provisions of this chapter~~
319 ~~against any person found to be violating the same.~~

320 (a) Application shall be made to the city clerk on a form provided by the city
321 clerk. In addition to paying the license fee, the applicant shall attest to the truthfulness of
322 the application and shall complete the application in full, providing the following
323 information:

324 (1) Name and permanent address of the applicant and the business. If
325 the applicant is not an individual, the names and permanent addresses of the
326 officers of the corporation or the members of the partnership, firm, limited liability
327 company or other business entity.

328 (2) The applicant's Kansas sales tax certificate number, if applicable.

329 (3) A brief description of the licensed activity, including the nature of
330 the applicant's business and the merchandise or services being offered.

331 (4) The location of the activity.

332 (5) A statement indicating whether or not the applicant has had a
333 sidewalk vending license revoked by the city or another municipality within the
334 two preceding years prior to the date of application.

335 (6) Written permission of the property owner or tenant and immediately
336 adjacent property owner(s) or tenant(s) if the applicant is conducting business in
337 front of a retail business.

(7) A certificate of insurance from the applicant demonstrating general liability coverage in an amount not less than \$500,000 per single incident.

(b) License Fees. The fee shall be \$10 per day and shall not be pro-rated or refundable for any reason, including denial of an application or license revocation. The license shall be valid only for the day(s) set out in the license; except that the license is not valid on days during which special events permitted pursuant to TMC Chapter 12.70 occur unless the participation of the licensee has been approved by the special event sponsor.

Section 9. That section 5.115.090, Required, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Required Sidewalk vendor—License issuance; Denial; Right to appeal.

~~It shall be unlawful for any person to engage in the business of peddler, canvasser, solicitor, transient vendor or transient merchant within the city without having first secured a license therefor as provided in this article.~~

(a) The city clerk shall review each license application and shall consult with other city departments, as applicable. The city clerk, after consultation with the legal department, may deny the license application for any of the following:

(1) Fraud, misrepresentation or any false statement contained in the license application.

(2) Failure to pay the license fee and/or provide all of the information requested in the license application.

(3) Revocation of a license for sidewalk vending by the city or another municipality within the two preceding years prior to the date of application.

(b) Except for a denial based upon subsection (a)(2), an applicant may appeal the decision to the council in accordance with TMC 5.05.120.

Section 10. That section 5.115.100, Exemptions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Exemptions Sidewalk vendor—Prohibited acts.

~~The following organizations and their members and the following activities shall be exempt from the licensing and registration provisions of this article:~~

~~(a) Exhibitions, street fairs, amusement enterprises, expositions, promotional ventures or other civic entertainment where a permit has been obtained, if applicable, or where such activity is sponsored in part by the city, civic organizations, not-for-profit organizations, public or private schools, or educational institutions.~~

~~(b) Auctions as regulated by this code or state statute.~~

~~(c) Garage sales as regulated by this code.~~

~~(d) Sales of agricultural products, nursery products and foliage plants at an organized farmer's market or other such event at a specified location permitted under the exemptions to this section; provided, that such sales of agricultural products, nursery products and foliage plants shall comply with the prohibitions listed in this chapter with the exception that artificial lighting may be used.~~

~~(e) Sales conducted within the following structures: trade centers, convention centers, shopping centers, and trade, exhibition or convention centers located in hotels and motels.~~

~~(f) Sales conducted at Heartland Park Topeka.~~

~~(g) Sales or displays at sales, bazaars or concessions sponsored or operated by public or private schools, educational institutions, civic organizations, or not-for-profit organizations.~~

~~(h) Sales by any person who has had a permanent business location in this city for not less than six months in this or the previous calendar year but who may carry on a transient business at locations in this city other than the person's permanent business location; provided, that such sales shall comply with the prohibitions listed in this chapter with the exception that artificial lighting may be used.~~

~~(i) Newspaper vendors.~~

~~(j) Food service establishments that are otherwise regulated and inspected by the Kansas Department of Health and Environment. Notwithstanding the foregoing, this exemption specifically excludes mobile restaurants and mobile food service units or push carts as included in the definition of food service establishments in K.S.A. 36-501.~~

~~(k) Sales at wholesale to retail merchants by commercial travelers or selling agents in the usual course of business.~~

~~(l) Sales to the owner or legal occupant of residential premises at such premises pursuant to prior invitation by such owner or legal occupant. Such invitation shall have been issued by the owner or legal occupant at least 24 hours prior to the sale and the invitation shall not be solicited in person but by other means such as telephone, mailing or other advertisement.~~

It shall be unlawful for any sidewalk vendor to do any of the following:

(a) Conduct business or carry on activities in violation of any zoning requirements.

(b) Conduct business between the hours of midnight and 8 a.m.

(c) Conduct business in such a way as would restrict or interfere with the ingress or egress of abutting property owners or tenants, increase traffic congestion or obstruct adequate access to fire, police, or utility employees.

(d) Use any electronic device for amplification in an outdoor area or to otherwise create, or gather people who create, noise sufficient so as to disturb the peace, quiet or repose of surrounding residential or commercial areas.

(e) Fail to have a trash receptacle at the location. The receptacle cannot interfere with sidewalk access. Immediately upon cessation of vending, the vendor shall remove and properly dispose of all trash and litter associated with the vendor's activities.

Section 11. That section 5.115.110, Certificate of registration/license – Application, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Certificate of registration/license — ApplicationSidewalk vendor—Display of license.

~~No person shall engage in the activities as defined in TMC 5.115.010 within the corporate limits of the city without first obtaining a certificate of registration and license therefor, unless otherwise exempted. Any applicant for a certificate of registration and license under this chapter shall file with the city clerk a sworn application on a form furnished by the city clerk, which shall give the following information:~~

~~(a) Name and date of birth of applicant.~~

~~(b) State sales tax number.~~

~~(c) Credentials from the person, firm or corporation or association whom the applicant is employed by or represents.~~

~~(d) Physical description of the applicant.~~

~~(e) Period of time for which the certificate and license are applied.~~

~~(f) Address of the applicant's present place of residence.~~

~~(g) A brief description of the nature of the business and the goods to be sold.~~

~~(h) Location and zoning of any structure, building or vehicle to be used for the activities defined herein, including identification of the location of the activities and a site plan indicating where on the identified property the activities will take place.~~

~~(i) Fingerprints of the applicant.~~

~~(j) Whether or not within 10 years immediately preceding the date of making application the applicant has been convicted of any felony or misdemeanor involving crimes against persons as those crimes are defined in Chapter 21, Article 54, Kansas Statutes Annotated, and theft, burglary, and criminal use of a financial card as those crimes are defined in Chapter 21, Article 58, Kansas Statutes Annotated. A diversion granted for any of the offenses enumerated in this section shall be considered as a conviction.~~

~~(k) Written authorization from the owner or lessee of the property to conduct the activities at the identified site.~~

Each licensee shall display the license in a prominent place so that it is clearly visible to the public.

Section 12. That section 5.115.120, Fees for license – Transferability – Exhibition, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

~~Fees for license – Transferability – Exhibition~~Sidewalk vendor—One location; Use of sidewalk.

~~(a) The fee for the license required by this chapter shall be \$140.00. There shall be no proration of this fee. No license issued under the provisions of this chapter shall be used by any person, other than the one to whom it was issued. Any person engaged in activities as described in TMC 5.115.010 shall exhibit their licenses at all times.~~

~~(b) Notwithstanding the foregoing, the fee for the license required for each mobile restaurant, mobile food service unit or push cart shall be \$250.00. There shall be no proration of this fee. No license issued under the provisions of this chapter shall be used by any person, other than the one to whom it was issued.~~

(a) Each license shall authorize sales only at one location, which shall be identified in the license.

(b) A sidewalk vendor has no exclusive right to a particular sidewalk location. The city manager or designee reserves the right to restrict use of the sidewalk or impose conditions on the license after taking into consideration the potential for congestion, access to adjoining businesses, pedestrian traffic and any other factor that may inconvenience the public.

(c) A sidewalk vendor shall not block access to residences or businesses and shall ensure that there is access of at least five feet in width for passage of wheelchairs and electric personal assistive mobility devices.

Section 13. That section 5.115.130, Display, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

DisplayFlea market promoter—License required.

~~A separate license shall be issued to each person licensed under the provisions of this chapter, which license shall be conspicuously displayed by the licensee. Every licensee shall have the license in the licensee's possession at all times the licensee is engaging in business, and display the license to any person upon request; and if any licensee sells, offers or exposes for sale any goods, wares or merchandise from a wagon, cart, truck, automobile or any other vehicle, the license shall be posted in a conspicuous place upon the vehicle.~~

(a) It shall be unlawful to rent space or allocate space to flea market sellers without a flea market promoter license issued pursuant to this chapter.

(b) A flea market promoter providing space to flea market sellers at more than one location shall be required to obtain a license for each location. Only one license per location shall be required for each flea market and individual flea market sellers shall not be required to obtain any other city license in order to operate at a flea market.

Section 14. That section 5.115.140, Issuance of license, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Issuance of licenseFlea market promoter—License application; Fee; Duration.

~~Upon receipt of an application for certificate of registration and license, the city clerk shall forward the application to the planning agency and police department. Within 10 days of the application date the planning agency and police department shall review~~

~~the application for compliance with appropriate zoning requirements (planning) and confirmation of the applicant's criminal record (police). The city clerk shall issue a license after receipt of approval from the planning agency and police department. Such license shall contain the signature and seal of the issuing officer and shall show the name and address of the license, the date of issuance and length of time the license shall be operative, and the nature of the business involved. A transient merchant/peddler license shall be valid for a period not to exceed 30 consecutive days and shall be valid only for sales at the site identified in the application. Not more than one license may be issued to any transient merchant during any 120-day period of time. Licenses for mobile restaurants, mobile food service units or push carts shall be valid for a period of six months. The city clerk shall keep a permanent record of all such licenses issued and submit a copy of such license to the chief of police. The licensee shall carry the certificate at all times.~~

(a) Application shall be made to the city clerk on a form provided by the city clerk. In addition to paying the license fee, the applicant shall attest to the truthfulness of the application and shall complete the application in full, providing the following information:

(1) Name, permanent address and contact information for the applicant. If the applicant is not an individual, the names and permanent addresses of the officers of the corporation or the members of the partnership, firm, limited liability company or other business entity.

(2) The location or address of the flea market and the zoning district.

(3) A statement indicating whether or not the applicant has had a flea market license revoked by the city or another municipality within the two preceding years prior to the date of application.

(4) Name of the property owner on which the flea market will be operated and written permission of the property owner if the applicant is not the property owner.

(5) The period of time for which the flea market will be in operation.

(b) License Fee; Duration. The license fee shall be \$100 and shall not be prorated or refundable for any reason, including denial of an application or license revocation. The license shall expire on December 31 of the year in which it is issued.

Section 15. That section 5.115.150, Penalties, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Penalties Flea market promoter—License issuance; Denial; Right to appeal.

~~Any person found in violation of the provisions of this chapter shall be fined not less than \$100.00, nor more than \$499.00, and/or shall serve in jail not more than 179 days.~~

(a) The city clerk shall review each license application and shall consult with other city departments, as applicable. The city clerk, after consultation with the legal department, may deny the license application for any of the following:

(1) Fraud, misrepresentation or any false statement contained in the license application.

(2) Failure to pay the license fee and/or provide all of the information requested in the license application.

541 (3) Operation of the business would violate the zoning code.

542 (4) Revocation of a flea market license by the city or another
543 municipality within the two preceding years prior to the date of application.

544 (b) Except for a denial based upon subsection (a)(2), an applicant may appeal
545 the decision to the council in accordance with TMC 5.05.120.

546 Section 16. That section 5.115.160, Denial or revocation of registration and
547 license, of The Code of the City of Topeka, Kansas, is hereby amended to read as
548 follows:

549 ~~Denial or revocation of registration and license~~Flea market promoter—
550 Display of license.

551 ~~The city may deny or revoke a registration and license if the applicant or licensee~~
552 ~~has been convicted of a crime set forth in TMC 5.115.110.~~

553 Each licensee shall display the license in a prominent place so that it is clearly
554 visible to the public.

555 Section 17. That The Code of the City of Topeka, Kansas, is hereby amended
556 by adding a section to be numbered 5.115.170, which said section reads as follows:

557 Flea market promoter—Records.

558 Each licensee shall keep accurate records of the names and addresses of each
559 flea market seller, together with a brief description of the type of merchandise offered for
560 sale. The licensee shall, upon request by a law enforcement officer or the city clerk,
561 submit such records for inspection.

562 Section 18. That The Code of the City of Topeka, Kansas, is hereby amended
563 by adding a section to be numbered 5.115.180, which said section reads as follows:

564 **Mobile food vendors—License required; Exceptions.**

565 It shall be unlawful for any person to conduct business as a mobile food vendor
566 without a license having been issued pursuant to this chapter unless one of the
567 following exceptions applies:

568 (a) The person is a vendor approved by the sponsor of a special event for
569 which the sponsor has secured a special event permit in accordance with Chapter 12.70
570 of the Code.

571 (b) The person is selling food and/or beverages in a farmer's market
572 registered with the Kansas Department of Agriculture.

573 (c) The person has a permanent restaurant business location in the city and
574 operates a mobile food unit at other locations for no more than ten days during a
575 calendar year.

576 (d) The person is providing catering services to a private event that is not
577 open for the sale of food and/or beverage to the general public.

578 (e) The person is a vendor operating in a park or recreational facility that is
579 under the jurisdiction of the Shawnee County Parks & Recreation department.

580 Section 19. That The Code of the City of Topeka, Kansas, is hereby amended
581 by adding a section to be numbered 5.115.190, which said section reads as follows:

582 **Mobile food vendor—License application; Fee; Duration.**

583 (a) Application shall be made to the city clerk on a form provided by the city
584 clerk. In addition to paying the license fee, the applicant shall attest to the truthfulness of
585 the application and shall complete the application in full, providing the following
586 information:

587 (1) Name and permanent address of the applicant and the business. If

588 the applicant is not an individual, the names and permanent addresses of the
589 officers of the corporation or the members of the partnership, firm, limited liability
590 company or other business entity.

591 (2) The name of the owner and the type, make and registration number
592 of the vehicle(s).

593 (3) A brief description of the nature of the business and the
594 food/beverage being offered for sale.

595 (b) The applicant shall pay a license fee in the amount of \$300.00, which shall
596 not be pro-rated or refundable for any reason, including denial of an application or
597 license revocation.

598 (c) A mobile food vendor license is valid until December 31 of the year in
599 which it is issued; except that the license is not valid on days during which special
600 events permitted pursuant to TMC Chapter 12.70 occur unless the participation of the
601 licensee has been approved by the special event sponsor.

602 Section 20. That The Code of the City of Topeka, Kansas, is hereby amended
603 by adding a section to be numbered 5.115.200, which said section reads as follows:

604 **Mobile food vendor—License issuance; Denial; Right to appeal.**

605 (a) The city clerk shall review each license application and shall consult with
606 other city departments, as applicable. The city clerk, after consultation with the legal
607 department, may deny the license application for any of the following:

608 (1) Fraud, misrepresentation or any false statement contained in the
609 license application.

610 (2) Failure to pay the license fee and/or provide all of the information
611 requested in the license application.

612 (3) Revocation of a license for mobile food vending by the city or
613 another municipality within the two preceding years prior to the date of
614 application.

615 (b) Except for a denial based upon subsection (a)(2), an applicant may appeal
616 the decision to the council in accordance with TMC 5.05.120.

617 Section 21. That The Code of the City of Topeka, Kansas, is hereby amended
618 by adding a section to be numbered 5.115.210, which said section reads as follows:

619 **Mobile food vendor—Prohibited acts.**

620 It shall be unlawful for a mobile food vendor to do any of the following:

621 (a) Failing to comply with zoning ordinances.

622 (b) Locating a unit where the unit or a line of customers would hinder
623 vehicular, pedestrian or bicycle traffic or block or reduce sidewalk access to less than
624 five feet in width for passage of wheelchairs and electric personal assistive mobility
625 devices.

626 (c) Blocking or obstructing access to residences, businesses, driveways or
627 access points to a property.

628 (d) Operating on private property without the written permission of the
629 property owner.

630 (e) Conducting business between the hours of midnight and 7:00 a.m.

631 (f) Failing to have a trash receptacle attached to the unit or located within 15
632 feet of the unit. The receptacle cannot interfere with vehicle access, pedestrian

movement or handicap-accessible routes to and around the unit. Immediately upon cessation of vending, the vendor shall remove and properly dispose of all trash and litter accumulated at the vending site.

(g) Failing to maintain any license or certification required by the State of Kansas or Shawnee County. Upon request, the vendor shall provide such documents to any law enforcement officer or city employee.

Section 22. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section to be numbered 5.115.220, which said section reads as follows:

Mobile Food vendors—Display of license.

Each licensee shall display the license in a prominent place so that it is clearly visible to the public.

Section 23. That original § 5.115.010 through § 5.115.160 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 24. This ordinance shall take effect on January 1, 2017 and be in force from and after its passage, approval and publication in the official City newspaper.

Section 25. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 26. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

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PASSED AND APPROVED by the City Council on December 6, 2016.

CITY OF TOPEKA, KANSAS

Larry E. Wolgast, Mayor

ATTEST:

Brenda Younger, City Clerk